

THE ILLEGAL WAR ON LATIN AMERICAN (!) TERRORISM

I linked to this Jeremy Scahill post already, but I wanted to point out a few things about Scahill's elaboration on the WaPo's covert ops story of the other day.

First, Scahill provides a list of locations where Obama's expanded special operations war has deployed:

The Nation has learned from well-placed special operations sources that among the countries where elite special forces teams working for the Joint Special Operations Command have been deployed under the Obama administration are: Iran, Georgia, Ukraine, Bolivia, Paraguay, Ecuador, Peru, Yemen, Pakistan (including in Balochistan) and the Philippines. These teams have also at times deployed in Turkey, Belgium, France and Spain. JSOC has also supported US Drug Enforcement Agency operations in Colombia and Mexico. The frontline for these forces at the moment, sources say, are Yemen and Somalia. "In both those places, there are ongoing unilateral actions," said a special operations source. "JSOC does a lot in Pakistan too."

I'm not sure about you, but I, for one, have never heard of "Al Qaeda in Ecuador" or "Al Qaeda in Belgium." While some of these deployments likely **do** have ties to fighters just one step removed from al Qaeda (later in the article, Scahill describes JSOC partnering with Georgia to pursue Chechens), others might be more likely to have ties to terrorist financing (Belgium) or illicit trade (including drugs) that might fund terrorism. Or hell, maybe just

oil and gas, since they're pretty criminal and we're addicted, so it's practically the same thing.

Which brings me back to the UN report on targeted killings. When describing the target of these covert ops, the WaPo story said the ops are directed "against al Qaeda and other radical organizations." As I highlighted from the WaPo story, John Bellinger believes many of those targeted have nothing to do with 9/11.

Many of those currently being targeted, Bellinger said, "particularly in places outside Afghanistan," had nothing to do with the 2001 attacks.

Which is a concern the UN report expresses: that the US has declared itself to be in a non-international armed conflict that is sufficiently vaguely defined as to include many people whose targeting would be illegal under international humanitarian law.

53. Taken cumulatively, **these factors make it problematic for the US to show that – outside the context of the armed conflicts in Afghanistan or Iraq – it is in a transnational non-international armed conflict against "al Qaeda, the Taliban, and other associated forces"**¹⁰⁷ without further explanation of how those entities constitute a "party" under the IHL of non-international armed conflict, and whether and how any violence by any such group rises to the level necessary for an armed conflict to exist.

[snip]

55. **With respect to the existence of a non-state group as a "party", al-Qaeda and other alleged "associated" groups are often only loosely linked, if at all. Sometimes they appear to be not even groups, but a few individuals who take "inspiration" from al Qaeda.** The idea that, instead, they are part of

continuing hostilities that spread to new territories as new alliances form or are claimed may be superficially appealing but such “associates” cannot constitute a “party” as required by IHL – although they can be criminals, if their conduct violates US law, or the law of the State in which they are located.

56. To ignore these minimum requirements, as well as the object and purpose of IHL, would be to undermine IHL safeguards against the use of violence against groups that are not the equivalent of an organized armed group capable of being a party to a conflict – whether because it lacks organization, the ability to engage in armed attacks, or because it does not have a connection or belligerent nexus to actual hostilities. It is also salutary to recognize that whatever rules the US seeks to invoke or apply to al Qaeda and any “affiliates” could be invoked by other States to apply to other non-state armed groups. **To expand the notion of non-international armed conflict to groups that are essentially drug cartels, criminal gangs or other groups that should be dealt with under the law enforcement framework would be to do deep damage to the IHL and human rights frameworks.** [my emphasis]

The UN reports that the US has admitted to using drones to take out Afghan drug lords; Scahill notes we’ve used these covert teams to target drug cartels in Mexico and Colombia. And the inclusion of so many Latin American countries on Scahill’s list suggests further possible drug ties (while the presence of Georgia and Ukraine on Scahill’s list suggest the possibility of organized crime targets).

In other words, precisely the concern the UN report lays out may be reflected in Scahill’s

list.

All that begs the question of what specific legal authorization the Obama Administration claims to be using here. The WaPo story suggests this all goes back to the Authorization to Use Military Force, which specifically limits its application to those who executed or supported 9/11.

Former Bush officials, still smarting from accusations that their administration overextended the president's authority to conduct lethal activities around the world at will, have asked similar questions. "While they seem to be expanding their operations both in terms of extraterritoriality and aggressiveness, they are contracting the legal authority upon which those expanding actions are based," said John B. Bellinger III, a senior legal adviser in both of Bush's administrations.

The Obama administration has rejected the constitutional executive authority claimed by Bush and has based its lethal operations on **the authority Congress gave the president in 2001 to use "all necessary and appropriate force against those nations, organizations, or persons" he determines "planned, authorized, committed, or aided" the Sept. 11 attacks.**

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Scahill reports that it goes back to a 2004 Rummy order (which, since Scahill describes it as being drafted in 2003, would have been developed while Bellinger was the Legal Advisor for then National Security Advisor Condi Rice).

Sources working with US special operations forces told *The Nation* that the Obama administration's expansion of special forces activities globally has been authorized under a classified order dating back to the Bush administration. Originally signed in early 2004 by then-Secretary of Defense Donald Rumsfeld, it is known as the "AQN ExOrd," or **Al Qaeda Network Execute Order**. The AQN ExOrd was intended to cut through bureaucratic and legal processes, allowing US special forces to move into denied areas or countries beyond the official battle zones of Iraq and Afghanistan.

"The ExOrd spells out that we reserve the right to unilaterally act against al Qaeda and its affiliates anywhere in the world that they operate," said one special forces source. The current mindset in the White House, he said, is that "the Pentagon is already empowered to do these things, so let JSOC off the leash. And that's what this White House has done." He added: "JSOC has been more empowered more under this administration than any other in recent history. No question."

The AQN ExOrd was drafted in 2003, primarily by the Special Operations Command and the office of the Assistant Secretary of Defense for Special Operations/Low-Intensity Conflict and was promoted by neoconservative officials such as former Deputy Defense Secretary Paul Wolfowitz and Undersecretary of Defense for Intelligence Stephen Cambone as a justification for special forces operating covertly—and lethally—across the globe. [my emphasis]

But according to Scahill's source, the AQN ExOrd was directed at Al Qaeda and its affiliates (as the name itself would suggest). Not, presumably,

Latin American drug cartels.

And then there's the authorization first described in the NYT, which is what first intensified this focus on Obama's covert wars, and which I've unilaterally nicknamed—in an act that surely violates the international rules of acronymy—the “JUnc-WTF.”

The top American commander in the Middle East has ordered a broad expansion of clandestine military activity in an effort to disrupt militant groups or counter threats in Iran, Saudi Arabia, Somalia and **other countries in the region**, according to defense officials and military documents.

The secret directive, signed in September by Gen. David H. Petraeus, authorizes the sending of American Special Operations troops to **both friendly and hostile nations in the Middle East, Central Asia and the Horn of Africa** to gather intelligence and build ties with local forces. Officials said the order also permits reconnaissance that could pave the way for possible military strikes in Iran if tensions over its nuclear ambitions escalate.

While the Bush administration had approved some clandestine military activities far from designated war zones, **the new order is intended to make such efforts more systematic and long term, officials said**. Its goals are to build networks that could “penetrate, disrupt, defeat or destroy” **Al Qaeda and other militant groups**, as well as to “prepare the environment” for future attacks by American or local military forces, the document said. The order, however, does not appear to authorize offensive strikes in any specific countries.

[snip]

General Petraeus's order is meant for small teams of American troops to fill intelligence gaps about terror organizations and other threats in **the Middle East and beyond**, especially emerging groups plotting attacks against the United States. [my emphasis]

Now, it's not clear what relationship the JUnc-WTF has with the AQN ExOrd and the operations Scahill describes. Both describe clandestine teams operating in countries that are both friendly and unfriendly to us. Both describe partnering, in some cases, with local forces. The NYT described JUnc-WTF as operating primarily in countries close to the Middle East (even leaving out an obvious counterterrorism target, Philippines), though the NYT did describe JUnc-WTF as targeting developing threats in the "Middle East and beyond," and Scahill did say the operations were focused on Yemen and Somalia, as well as Pakistan. Also, the NYT admits that it withheld information about operations in certain countries, so it's possible they're not presenting all they know about geographic scope. And the NYT described JUnc-WTF to be focused on collecting intelligence, though the code phrase "prepare the environment" suggests it is far more than that. Finally, the NYT describes the associational scope of JUnc-WTF to be "to build networks that could 'penetrate, disrupt, defeat or destroy' Al Qaeda **and other militant groups**"—suggesting that the order applies to groups beyond al Qaeda, but by not quoting the document directly on that point, not clarifying precisely how JUnc-WTF defines those other militant groups.

The UN has vague concerns and Bellinger very specific ones about the way in which we're using cover of a war on terrorism (which has, after all, been renamed a war against violent extremism, with no specificity to al Qaeda or terrorism) to target people we've got no legal

basis targeting.

There are two very specific ways to think of the danger of this. Scahill makes it clear that these teams are operating in Iran; so this covert war could present an opening front on a war there. And once you consider they've been targeting Mexican drug cartels—operating on the border, then you're deploying covert teams in places like Juarez, on the border of the United States.

Nope, I can't see any way this would all go horribly wrong. Not at all.